



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 7466059

Date: FEB. 25, 2020

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a [REDACTED], seeks second preference immigrant classification for the Beneficiary as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that the Beneficiary qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits additional documentation and a brief asserting that the Beneficiary is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate the beneficiary's qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).¹ *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (NYSDOT).

² See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.³

II. ANALYSIS

The Director found that the Beneficiary qualifies as a member of the professions holding an advanced degree.⁴ The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

A. Substantial Merit and National Importance of the Proposed Endeavor

For the reasons outlined below, we find the Petitioner has not shown that the Beneficiary's proposed endeavor meets the first prong of the *Dhanasar* analytical framework. Accordingly, the Director's determination on this issue will be withdrawn.

The Petitioner indicated that it intends to continue to employ the Beneficiary as a process engineer.⁵ It stated that the Beneficiary's proposed work involves designing and planning the layout for material processing operations for its [REDACTED] including hardening, washing, laminating, etching, engraving, polishing, painting, and plating. In addition, the Petitioner asserted that the Beneficiary's work is aimed at planning the sequence of operations and specifying procedures for cutting, shaping, and preparing basic material. It further contended that the Beneficiary's undertaking involves conducting tests and measurements throughout stages of production to determine control over variables such as temperature, density, specific gravity, pressure and viscosity. The Petitioner also noted that the Beneficiary's proposed endeavor includes establishing and submitting processing requirements to be met in designing and acquiring equipment; and designing, creating, and supporting processes for high volume manufacturing.

In response to the Director's request for evidence, the Petitioner stated:

[The Beneficiary] will continue optimizing processes currently under development and demonstrate the feasibility of manufacturing processes to meet [the Petitioner's] high-volume manufacturing needs. He will initiate tool installations to establish sufficient capacity so [the Petitioner] can build a successful model for future volume increases. He will also work with global supply management teams to secure supply of factory material.

³ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

⁴ The Beneficiary received a Ph.D. in chemistry from [REDACTED] University in December 2017.

⁵ As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for the Beneficiary to have a job offer from a specific employer. However, we consider information about his current position to illustrate the capacity in which he intends to work in order to determine whether his proposed endeavor meets the requirements of the first prong of the *Dhanasar* framework.

In addition, the record contains a letter from [REDACTED] Technology Development (TD) Module and Integration Yield Engineer Manager with the Petitioner, who further discussed the Beneficiary's proposed work involving the company's manufacturing processes, stating:

[The Beneficiary] qualifies tools at our development site and *in-situ* ramp to manufacturing volumes to demonstrate the technology meets feasibility at the production site. [The Beneficiary] is tool owner and operator owner of a key process, responsible for operation equipment and process development to meet TD program requirements. He . . . is an expert in troubleshooting the equipment to fix root causes of tool errors and implement solutions to prevent errors from reoccurring. He is capable of performing all levels of preventative maintenance to sustain tool availability to allow for maximum processing.

The Petitioner's evidence includes information showing that its technologies are found in numerous [REDACTED] products. The record also contains an article discussing the challenges facing the [REDACTED] industry and their consequences for the U.S. economy and national security, and recommendations for ensuring U.S. leadership and innovation in [REDACTED]. In addition, the appellate submission contains job descriptions for three process engineer positions with the Petitioner. While this documentation helps show the Beneficiary' proposed work as a process engineer has substantial merit, the evidence is not sufficient to demonstrate this endeavor's national importance.

The Petitioner asserts that the Beneficiary's "employment has national importance by virtue of its national and global implications within the area of [REDACTED] manufacturing and its direct link to the substantial positive economic effects of [the Petitioner's] continued success as a U.S. company." It offers information about the scale of its business operations and its economic impact on the U.S. economy. The Petitioner contends that it "employs more than 50,000 individuals at campuses across the country" and that the positive economic effects of its business operations are substantial, including generating billions in gross revenue and federal tax payments. Additionally, the Petitioner provided remarks from former U.S. President Barack Obama discussing the company's creation of U.S. manufacturing jobs.

In determining national importance, the relevant question is not the importance of the industry in which the individual will work or the past success of his employer; instead we focus on the "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* We also stated that "[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance." *Id.* at 890.

To evaluate whether the proposed endeavor satisfies the national importance requirement we look to evidence documenting the "potential prospective impact" of the Beneficiary's particular undertaking. While the Petitioner asserts that the national importance of the Beneficiary's endeavor is evident from the scale of the company's overall business operations, it has not demonstrated that the economic implications of these operations would be attributable to the Beneficiary's process engineering

projects to an extent that his proposed work holds national importance. For example, the Petitioner has not demonstrated that the Beneficiary's proposed endeavor has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Here, the Petitioner has not shown that the wider economic effects it is claiming as a U.S. company are implications of the Beneficiary's specific proposed endeavor to provide process engineering services for its manufacturing equipment. Because the Petitioner has not provided sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to the Beneficiary's future process engineering work, it has not shown that benefits to the regional or national economy resulting from his projects would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

Furthermore, the issue here is not the broader implications of the Petitioner's innovations in [REDACTED] manufacturing or the widespread utilization of its products by consumers, but rather the potential prospective impact of the Beneficiary's specific proposed work as a process engineer. In *Dhanasar* we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. Here, we find the record does not show that the Beneficiary's proposed endeavor stands to sufficiently extend beyond his employer to impact the [REDACTED] manufacturing industry more broadly at a level commensurate with national importance. Nor has the Petitioner sufficiently demonstrated that the particular work the Beneficiary proposes to undertake offers original innovations that contribute to advancements in the industry, or otherwise has broader implications for his field. Without sufficient documentary evidence of its broader impact, the Beneficiary's proposed process engineering work for the Petitioner does not meet the "national importance" element of the first prong of the *Dhanasar* framework.

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the Beneficiary. The record includes documentation of his curriculum vitae, academic credentials, student awards, published articles, conference presentations, annual job performance review, and employee recognition. The Petitioner also offered evidence of articles that cited to the Beneficiary's published work, and reference letters discussing his work for the Petitioner and graduate research projects at [REDACTED] University.

The Petitioner contends that the Beneficiary's academic qualifications, awards, work experience, research articles, citation evidence, and letters of support indicate that he is well positioned to advance his proposed endeavor. For the reasons discussed below, the record supports the Director's determination that the evidence is insufficient to demonstrate that the Beneficiary is well positioned to advance his proposed endeavor under *Dhanasar*'s second prong.

In a letter supporting the petition, [REDACTED] professor of chemistry at [REDACTED] University, stated that "[i]n his graduate research at [REDACTED] University, [the Beneficiary] worked on the design and use of [REDACTED] as solubilizing agents for [REDACTED] [REDACTED] and [REDACTED] modification." [REDACTED] further indicated that the Beneficiary "developed new separation chemistry for a common class of protecting groups used in organic synthesis and worked on developing greener alternatives for the [REDACTED] reaction – processes identified by an industrial group for improving [REDACTED] synthesis," but did not provide specific

examples of how the Beneficiary's work has been implemented, utilized, or applauded by others in the field. Nor did [REDACTED] explain how the Beneficiary's graduate chemistry research relating to [REDACTED] or separation science renders the Beneficiary well positioned to advance his process engineering work for the Petitioner in the [REDACTED] industry.

In addition, [REDACTED] noted that he and the Beneficiary published articles reporting their research findings in *Catalysis Communications*, *Macromolecules*, and *Organic Letters*. On appeal, the Petitioner presents a March 2019 citation report from Google Scholar reflecting that these articles have been cited 13, 6, and 4 times respectively since 2016. The Petitioner does not, however, offer comparative statistics showing the significance of this level of citation within the Beneficiary's field.

With respect to the Beneficiary's process engineering work for the Petitioner, [REDACTED] his supervisor, indicated that the Beneficiary "worked on the reconfiguration of the cleaner mixing system and slurry dispense system to allow for direct cleaning solution piping and slurry automatic dosing. His dedication to sustaining the process manually enabled the new product to be successfully certified." [REDACTED] further stated the Beneficiary "documents detailed technical specifications when instruments are maintained and the information process to support a smooth transition of technology from low volume technology development sites to high volume manufacturing sites." [REDACTED] also asserted that the Beneficiary "reviews safety protocols before any engineering work is performed to ensure there are no safety issues, and conducts data analysis to monitor the health of instruments and the thickness of the wafers to ensure [the Petitioner] manufactures products with highest quality."

The record includes the Beneficiary's employee performance review that was prepared by [REDACTED]. This document states: "Job Description: [The Beneficiary] is a tool owner of BSP01, operation owner of the thin check. He is responsible for operation, equipment and process development to meet the TD program requirements." In the "Performance Summary" section of the review, [REDACTED] concludes that "[a]s a new engineer, [the Beneficiary] is on a solid trajectory for his development." The Petitioner, however, has not demonstrated that the Beneficiary's performance review represents a record of success in the process engineering field or that it is otherwise an indication that he is well positioned to advance his proposed endeavor.

As further evidence under *Dhanasar*'s second prong, the Petitioner provided an August 2018 email informing the Beneficiary and more than forty of his coworkers of their receipt of a "Cash Award." Additionally, the Petitioner submitted an October 2018 email announcing the company's Technology and Manufacturing Group's "second half 2018 Excellence Award recipients," but this announcement does not identify the Beneficiary. Regardless, the aforementioned employee awards post-date the filing of the petition. Eligibility must be established at the time of filing. See 8 C.F.R. § 103.2(b)(1).

The record also includes documentation indicating that the Beneficiary received a [REDACTED] Award" from the Department of Chemistry at [REDACTED] University (May 2017) and an [REDACTED] Scholarship in the amount of \$1000 for the [REDACTED] 2016 Semester" from the [REDACTED] University [REDACTED] Services Office. The Petitioner, however, did not offer the selection criteria for these awards. Nonetheless, the Petitioner has not demonstrated that receiving these academic awards represents a record of success in process engineering or is otherwise an indication that the Beneficiary is well positioned to advance his proposed work.

The evidence indicates that the Beneficiary has conducted, published, and presented research during his graduate studies, but the Petitioner has not shown that this work renders him well positioned to advance his proposed endeavor. While we recognize that research must add information to the pool of knowledge in some way in order to be accepted for publication, presentation, funding, or academic credit, not every individual who has performed original graduate research will be found to be well positioned to advance his proposed endeavor. Rather, we examine the factors set forth in *Dhanasar* to determine whether, for instance, the individual's progress towards achieving the goals of his endeavor, record of success in similar efforts, or generation of interest among relevant parties supports such a finding. *Id.* at 890. The Petitioner, however, has not shown that the Beneficiary's work has served as an impetus for progress in the chemistry field or that it has generated substantial positive discourse in the [redacted] industry. Nor does the evidence otherwise demonstrate that his work constitutes a record of success or progress in process engineering. As the record is insufficient to show that the Beneficiary is well positioned to advance his proposed endeavor, the Petitioner has not established that he satisfies the second prong of the *Dhanasar* framework.

C. Balancing Factors to Determine Waiver's Benefit to the United States

As explained above, the third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. Here, the Petitioner claims that the Beneficiary is eligible for a waiver due to his education, skills and experience in chemistry, the importance of his field, and the impracticality of labor certification. It also maintains that there is a labor shortage in science, technology, engineering, and mathematics fields.⁶ However, as the Petitioner has not established the national importance of the Beneficiary's proposed endeavor and that he is well positioned to advance that endeavor as required by the first and second prongs of the *Dhanasar* framework, the Beneficiary is not eligible for a national interest waiver and further discussion of the balancing factors under the third prong would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite first and second prongs of the *Dhanasar* analytical framework, we find that it has not established the Beneficiary is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.

⁶ We note that the U.S. Department of Labor addresses shortages of qualified workers through the labor certification process. Accordingly, a shortage alone does not demonstrate that waiving the requirement of a labor certification would benefit the United States.